

Senate Bill No. 1082

Passed the Senate September 8, 1999

Secretary of the Senate

Passed the Assembly September 7, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1771, 1771.5, 1771.9, 1779, and 1788 of, and to add Section 1771.11 to, the Health and Safety Code, relating to continuing care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1082, Ortiz. Continuing care contracts.

Under existing law, the State Department of Social Services is responsible for regulating activities relating to continuing care contracts.

This bill would specify rights of which no resident of a continuing care retirement community may be deprived, and would authorize the department to adopt reasonable rules further defining those rights.

This bill would also require providers to adopt and submit to the department a comprehensive disaster preparedness plan specifying policies for evacuation, relocation, continued services, reconstruction, organizational structure, insurance coverage, resident education, and plant replacement.

The bill would revise requirements for the submission of applications by providers of continuing care to sell deposit subscription agreements prior to initiating construction or a new phase or expansion of an existing continuing care retirement facility or prior to closing the sale or transfer of a continuing care retirement community.

The bill would also revise procedures for the department to follow in monitoring providers of continuing care.

This bill would require that all continuing care contracts shall include a copy of the resident's bill of rights.

The people of the State of California do enact as follows:

SECTION 1. Section 1771 of the Health and Safety Code is amended to read:



1771. Unless the context otherwise requires, the definitions in this section govern the interpretation of this chapter.

(a) (1) “Affinity group” means a grouping of individuals sharing a common interest, philosophy, or connection (e.g., military officers, religion).

(2) “Annual report” means audited financial statements and reserve calculations (as required by Sections 1792.2 and 1793), with accompanying certified public accountant’s opinions thereon, resident lists, evidence of fidelity continuing care bond, and certification that the contract in use for new residents has been approved by the department, all to be submitted to the department by each provider annually, as required by Section 1790.

(3) “Applicant” means any entity that submits an application to the department for a permit to sell deposit subscriptions and certificates of authority.

(4) “Audited financial statement” means financial statements prepared in accordance with generally accepted accounting principles and shall include the opinion of an independent certified public accountant; and notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial condition, and operation.

(b) [reserved]

(c) (1) “Cancellation” means to destroy the force and effect of an agreement or continuing care contract, by making or declaring it void or invalid.

(2) “Cancellation period” means the 90-day period, beginning when the transferor signs the continuing care contract, during which time the resident or transferor may rescind the continuing care contract.

(3) “Care” means nursing, medical, or other health related services, protection or supervision, assistance with the personal activities of daily living, or any combination of those services.

(4) “Cash equivalent” means certificates of deposit and United States treasury securities with a maturity of



five years or less. Possession and control of any of these instruments shall be transferred to the escrow agent or depository at the time the deposit is paid.

(5) “Certificate” or “certificate of authority” means the written authorization from the department for a specified provider to enter into one or more continuing care contracts at a single specified continuing care retirement community.

(6) “Condition” means a restriction or required action placed on a provisional or final certificate of authority by the department. A condition may limit the circumstances under which the provider may enter into any new contract, or may be a condition precedent to the issuance of a final certificate of authority.

(7) “Consideration” means some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.

(8) “Continuing care contract” means a written contract that includes a promise, expressed or implied, by a provider to provide one or more elements of care to an elderly resident for the duration of his or her life or for a term in excess of one year, in exchange for the payment of an entrance fee, the payment of periodic charges, or both types of payments. A continuing care contract may consist of one agreement or a series of agreements and may have other writings incorporated by reference. A life care contract, as defined in paragraph (1) of subdivision (I), is a type of continuing care contract.

(9) “Continuing care contract committee” means an advisory panel appointed pursuant to Section 1777.

(10) “Continuing care retirement community” (CCRC) means a facility where services promised in a continuing care contract are provided. A distinct phase of development approved by the department may be considered to be the continuing care retirement community when a project is being developed in successive multiple phases over a period of time. When the services are provided in a resident’s own home, the



homes into which the provider takes those services collectively are considered part of the community.

(11) “Control” means the power to direct or cause the direction of the management and policies of an operator of a continuing care retirement community, whether through the ownership of voting securities, by contract, or otherwise. A parent or sole corporate member of a corporation may exhibit control of the operator of the continuing care retirement community through direct participation in the initiation or approval of policies directly affecting the operations, including, but not limited to, approval of budgets or approval of the continuing care retirement community administrator.

(d) (1) “Department” means the State Department of Social Services.

(2) “Deposit subscription” means a cash or cash equivalent payment made by a subscriber to an applicant and the escrow agent prior to the release of escrow during development or construction of a continuing care retirement community.

(3) “Deposit subscription agreement” means a written contract in compliance with Section 1780.4 entered into between the transferor and applicant. This agreement allows an applicant to accept deposit subscriptions prior to the issuance of a provisional certificate of authority.

(4) “Depository” means a bank or institution that is a member of the Federal Deposit Insurance Corporation or a comparable title insurance program. The department’s approval of the depository shall be based, in part, upon its capability to ensure the safety of funds and properties entrusted to it and capable and willing to perform the obligations of the depository pursuant to the escrow agreement and this chapter. The depository may be the same entity as the escrow agent.

(5) “Director” means the Director of the State Department of Social Services.

(e) (1) “Elderly” means an individual who is 60 years of age or older.



(2) “Entity” means an organization or being that possesses separate existence for tax purposes. Entity includes a person, sole proprietorship, estate, trust, association, joint venture, partnership, or corporation.

(3) “Entrance fee” means an initial or deferred transfer of consideration made or promised to be made by a person entering into a continuing care contract, for the purpose of assuring care or related services pursuant to that continuing care contract or as full or partial payment for the promise to provide one or more elements of care for the term of the continuing care contract. An entrance fee includes the purchase price of a condominium, cooperative, or other interest sold in connection with a promise of continuing care. The entrance fee may include a previously paid deposit subscription, which is credited to the total entrance fee due at the time the transferor signs the continuing care contract. An entrance fee that is greater than 12 times the monthly fee shall be presumed to imply a promise to provide care for more than one year. The term “accommodation fee” may be synonymously used to mean an entrance fee.

(4) “Equity” means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(5) “Equity project” means a continuing care development project in which the transferors are given an equity interest in the continuing care retirement community property or in a transferable membership in a resident’s association.

(6) “Escrow agent” means a bank or institution, including, but not limited to, a title insurance company, approved by the department as capable of ensuring the safety of the funds and properties entrusted to it and capable and willing to perform the terms of the escrow pursuant to the escrow agreement and this chapter.

(f) “Facility” means any place or accommodation in which a provider undertakes to provide a resident with care or related services, whether or not the place or accommodation is constructed, owned, leased, rented, or otherwise contracted for by the provider.



(g) [reserved]

(h) [reserved]

(i) “Inactive certificate of authority” means a certificate that has been declared inactive under Section 1793.8 and renders its holder no longer authorized to enter into continuing care contracts, but still contractually obligated to continuing care residents and statutory compliance requirements.

(j) [reserved]

(k) [reserved]

(l) (1) “Life care contract” means a continuing care contract that includes a promise, expressed or implied, by a provider to provide routine services at all levels of care, including acute care and the services of physicians and surgeons, to a resident for the duration of his or her life. Care shall be provided in a continuing care retirement community having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on or adjacent to the premises. In a life care contract, no change is made in the monthly fee based on level of service. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(2) “Life lease” means a landlord-tenant relationship in which the tenant obtains only the right to possess a defined living unit for life. In a life lease there is no obligation or intent to provide care and services to the tenant at any time, present or future.

(m) (1) “Monthly care fee” means the monthly charge to a resident for accommodations and services rendered, including care, board, or lodging, and any other periodic charges to the resident, determined on a monthly or other recurring basis, pursuant to the provisions of a continuing care contract. Monthly care fees are exclusive of periodic entrance fee payments or other prepayments.

(2) “Monthly fee contract” means a continuing care contract that provides by its terms for the monthly payment of a fee for accommodations and services rendered.



(n) “Nonambulatory person” means a person who is unable to leave a building unassisted under emergency conditions, as described by Section 13131.

(o) [reserved]

(p) (1) “Per capita cost” means a continuing care retirement community’s operating expenses, excluding depreciation, divided by the average number of residents.

(2) “Permit to sell deposit subscriptions” means a written authorization by the department for an applicant to enter into one or more deposit subscription agreements at a single specified location.

(3) “Personal care” means assistance with personal activities of daily living, including dressing, feeding, toileting, bathing, grooming, mobility, and associated tasks, to help provide for and maintain physical and psychosocial comfort.

(4) “Personal care unit” means the living unit within a physical area of a continuing care retirement community specifically designed to provide ongoing personal care. A personal care unit is synonymous with an assisted living unit.

(5) “Prepaid contract” means a continuing care contract in which the monthly care fee, if any, may not be adjusted to cover the actual cost of care and services.

(6) “Processing fee” means a payment by the transferor to cover administrative costs of processing the application of a subscriber or prospective resident.

(7) “Promise to provide care” means any expressed or implied representation that care will be provided or will be available, such as by preferred access, whether the representation is part of a continuing care contract, other agreement, or series of agreements, or is contained in any advertisement, brochure, or other material, either written or oral.

(8) “Proposes” means a representation that an applicant or provider plans to make a future promise to provide care, which may be subject to the happening of certain events, such as continuing care retirement



community construction or obtaining a certificate of authority.

(9) “Provider” means an entity that provides, promises to provide, or proposes to promise to provide, care for life or for more than one year. “Provider” includes any entity that controls the entity that promises care as determined by the department. A homeowner’s association, cooperative, or condominium association shall not be a provider.

(10) “Provisional certificate of authority” means written authorization by the department that allows the provider to enter into continuing care contracts. This provisional certificate is issued after the conditions defined in Section 1786 have been met and is issued for a term specified by subdivision (b) of Section 1786.

(q) [reserved]

(r) (1) “Refundable reserve” means the amount calculated to ensure the availability of funds for specified refunds of entrance fees.

(2) “Refundable contract” means a continuing care contract form that includes promises, expressed or implied, to pay refunds of entrance fees or to repurchase the transferor’s unit, membership, stock, or other interest in the continuing care retirement community when the specified refund right is not fully amortized by the end of the sixth year of residency. A lump sum payment to a resident after termination of a continuing care contract that is conditioned upon resale of a unit shall not be considered a refund and shall not be advertised as a refund.

(3) “Reservation fee” means cash received by an applicant from an interested individual during a market test feasibility study that complies with subdivision (b) of Section 1771.6.

(4) “Resident” means a person who enters into a continuing care contract with a provider, or who is designated in a continuing care contract to be a person being provided or to be provided services, including care, board, or lodging.

(5) “Residential care facility for the elderly” means a housing arrangement as defined by Section 1569.2.

(6) “Residential living unit” means a living unit in a continuing care retirement community that is included in the residential care facility for the elderly license capacity, but not used exclusively for personal care or nursing services.

(s) “Subscriber” means a person who has applied to be a resident in a continuing care retirement community under development or construction, and who has entered into a deposit subscription agreement.

(t) (1) “Termination” means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

(2) “Transfer” means conveyance of a right, title, or interest.

(3) “Transfer fee” means a levy by the provider against the proceeds from the sale of a transferor’s equity interest.

(4) “Transfer trauma” means death, depression, or regressive behavior caused by the abrupt and involuntary transfer of an elderly resident from one home to another, resulting in a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and the major loss of visits from friends and relatives who may be unable to reach the new facility.

(5) “Transferor” means a person who transfers or promises to transfer a sum of money or property for the purpose of assuring care or related services pursuant to a continuing care contract, whether for the benefit of the transferor or another.

SEC. 2. Section 1771.5 of the Health and Safety Code is amended to read:

1771.5. (a) No resident of any continuing care retirement community shall be deprived of any civil or legal right, benefits, or privileges guaranteed by law, by the California Constitution, or by the United States Constitution solely by reason of status as a resident of a



community. In addition, because of the discretely different character of condominium and independent living programs that are a part of a continuing care retirement community, this section shall augment Chapter 3.9 (commencing with Section 1599), Section 73523 of the California Code of Regulations, and applicable federal law and regulations. All residents in independent living programs have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or board of directors.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.

(6) To maintain and establish ties to the local community.

(b) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall:

(1) Permit the formation of a resident council by interested residents, provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to permit a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The council may, among other things, make recommendations to management regarding resident issues which impact their quality of life. Proper notice shall be provided of all council meetings and the meetings shall be open to all residents to attend as well as present issues when



prearranged with the council president. Executive sessions of the council shall be for attendance only by council members.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management and access to the board of directors or general partners. The policies and procedures shall be evaluated at a minimum of every two years by the continuing care retirement community administration to determine their effectiveness in maintaining meaningful resident/management relations.

(c) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities or skilled nursing facilities, the provider shall provide a copy of the bill of rights provided for by this section to each resident at or before the resident's admission to the community.

(d) The department may, upon receiving a complaint relative to this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations and consult with the Continuing Care Contract Committee for determination of compliance.

(e) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional or final certificate of authority pursuant to Section 1793.21.

SEC. 3. Section 1771.9 of the Health and Safety Code is amended to read:

1771.9. (a) (1) The Legislature finds and declares all of the following:

(A) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live.

(B) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.



(C) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(2) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(A) Encouraging residents to form a resident council, assisting the residents, resident council, and resident association to keep informed about the operation of the community.

(B) Encouraging residents of a community or their elected representatives to select residents to participate as board members of the provider.

(C) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the community.

(b) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or a committee of residents, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the community and proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(c) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings provided for in subdivision (b).

(d) Residents shall be provided at least 14 days' advance notice of each meeting provided for in subdivisions (b) and (c). The notice of, and the agenda



for, the meeting shall be posted in a conspicuous place in the community at least 14 days prior to the meeting. The agenda and accompanying materials shall be available to residents of the community upon request.

(e) Each provider shall make available to the resident council, if any, or a committee of residents, a financial statement of activities comparing actual costs to budgeted costs broken down by expense category, not less than semiannually, and shall consult with the resident council, if any, or a committee of residents, during the annual budget planning process.

(f) Each provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community, a copy of the annual report, including a copy of the annual audited financial statement, but excluding personal confidential information.

(g) Each provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the board of director's meetings and shall retain these records for at least three years from the date the records were filed or issued.

(h) (1) The governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(2) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement



community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates.

(i) (1) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (h) to participate as a resident representative to the provider's governing body may, at the option of the resident council or association, be selected in any one of the following ways:

(A) By a majority vote of the resident council or resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(B) If no resident council or resident association exists, any resident may organize a meeting of the majority of the residents of the community to select or nominate residents to represent them before the governing body.

(C) Any other method designated by the resident council or resident association.

(2) The residents' council, association, or organizing resident, or in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the community at least 30 days' advance notice of the meeting to select a resident representative and shall post the notice in a conspicuous place at the community.

(j) Except as provided in subdivision (k), the resident representative shall receive the same notice of board meetings, board packets, minutes, and other materials as members and shall be permitted to attend, speak, and participate in all meetings of the board.

(k) Notwithstanding subdivision (j), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed



during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing facilities.

(l) The provider shall pay all reasonable travel costs for the resident representative.

(m) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(n) Nothing in this section shall prohibit a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

(o) On or before January 1, 2001, the Continuing Care Contracts Committee of the department established pursuant to Section 1777 shall evaluate and report to the Legislature on the implementation of this section.

SEC. 4. Section 1771.11 is added to the Health and Safety Code, to read:

1771.11. Each provider shall adopt a comprehensive disaster preparedness plan specifying policies for evacuation, relocation, continued services, reconstruction, organizational structure, insurance coverage, resident education, and plant replacement.

SEC. 5. Section 1779 of the Health and Safety Code is amended to read:

1779. (a) An application for a permit to sell deposit subscriptions and certificates of authority shall be filed with the department, as set forth in this chapter, in any of the following circumstances:

(1) Prior to entering into any continuing care contracts or any deposit subscription agreements.

(2) Prior to initiating construction of a prospective continuing care retirement community.

(3) Prior to initiating construction on a new phase or expansion of an existing continuing care retirement community. An expansion has occurred when there is an



increase in Residential Care Facility for the Elderly license capacity, an increase in the number of units at the continuing care retirement community, an increase in the number of skilled nursing beds, or additions to or replacement of existing continuing care retirement community structures that affects obligations to current residents. The department may waive all or portions of the application content requirements under Section 1779.4 for an expansion of an existing continuing care retirement community.

(4) Prior to converting an existing structure to a continuing care retirement community.

(5) Prior to recommencing marketing on a planned facility when the applicant has previously forfeited a permit to sell deposit subscriptions pursuant to Section 1793.7.

(6) Prior to executing new continuing care contracts after a provisional or final certificate of authority has been inactivated, revoked, surrendered, or forfeited.

(7) Prior to closing the sale or transfer of a continuing care retirement community.

(b) If the provider undergoes an organizational change, including, but not limited to, a change in structure, separation, or merger, a new application shall be required and a new certificate of authority must be issued by the department before any continuing care contracts may be executed by the new entity.

(c) A new application is not required for an entity name change if there is no change in the entity structure or management. If the provider undergoes a name change, the provider shall notify the department of the name change and shall return the previously issued certificate of authority for reissuance under the new corporate name.

(d) Within 10 days of submitting an application for a certificate of authority pursuant to paragraph (3) or (7) of subdivision (a), the provider shall notify residents of the existing community or communities of its application for a permit. The provider shall notify the resident's council or association of any plans filed with the



department to obtain new financing, additional financing for the facility, the sale or transfer of a community facility, any change in structure, and of any applications to the department for any expansion of the facility. A summary of the plans and application shall be posted in a prominent location in the facility so as to be accessible to all residents and the general public, indicating in the summary where the full plans and application may be inspected in the facility.

SEC. 6. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) Any continuing care contract shall contain all of the following:

(1) The legal name and address of the provider.

(2) The name and address of the continuing care retirement community.

(3) The resident's name and number of the unit to be occupied.

(4) If the transferor is someone other than the resident, the transferor's name and address shall be separately designated.

(5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the transferor that the organization is not financially responsible.

(6) The date the continuing care contract is signed by the transferor.

(7) The duration of the continuing care contract.

(8) A list of the following services that are to be made available to the resident, which shall include at a minimum, the following conditions for residential care facility for the elderly licensure:

(A) Regular observation of the resident's health status to ensure that his or her dietary needs, social needs, and needs for special services are satisfied.



(B) Safe and healthful living accommodations, including housekeeping services and utilities.

(C) Maintenance of house rules for the protection of residents.

(D) A planned activities program, which includes social and recreational activities appropriate to the interests and capabilities of the resident.

(E) Three balanced, nutritious meals and snacks made available daily, including special diets prescribed by a physician as a medical necessity.

(F) Personal care.

(G) Assistance with taking medications.

(H) Central storing and distribution of medications.

(I) Arrangements to meet health needs, including arranging transportation.

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract.

(10) The procedures and conditions under which residents may be voluntarily or involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall provide for all of the following:

(A) When, in the opinion of the continuing care retirement community management, a physician and surgeon, appropriate specialist, or licensing official, any of the following conditions exists:

(i) The resident is nonambulatory. The definition of nonambulatory, as defined in Section 13131, shall either be stated in the continuing care contract or be cited, with a copy of it made available, as an attachment or by specifying that it will be provided upon request. If the resident occupies a room that has a fire clearance for nonambulatory residence, provision for transfer under the above circumstances is unnecessary.

(ii) Resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person, or causes an unreasonable and



ongoing disturbance at the continuing care retirement community.

(iii) Transfer to the continuing care retirement community's skilled nursing facility or personal care unit is required for more efficient care and/or to protect the health of other residents, or because the level of care needed cannot lawfully be provided in the living unit.

(iv) Transfer to a nursing home or hospital or other facility is required and the provider has no facilities available for such care.

(B) Provision for transfer of a second resident when a shared accommodation arrangement is terminated.

(C) When transfer is requested or required, by provider or resident, for any other reason.

(11) Provisions for any change in the monthly rate and any refund of entrance fees when a resident transfers from any unit.

(12) Any continuing obligations of the provider in the event a resident is transferred.

(13) Whether the provider has any responsibility to resume care after a temporary transfer.

(14) The obligations of the provider for continued services to the resident while the resident is absent from the continuing care retirement community.

(15) The conditions under which the resident permanently releases his or her living unit.

(16) If real or personal properties are transferred in lieu of cash, a statement as to their value at the time of transfer, and how the value was ascertained shall be included.

(A) An itemized receipt which includes the information described above is acceptable, if incorporated as a part of the continuing care contract.

(B) With respect to the transfer of real property, a statement that the deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to a "continuing care contract" and may be subject to rescission by the transferor within 90 days from the date of the transfer.



(C) The failure to comply with paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the continuing care contract shall define the allocation of fees.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For continuing care contracts which require a monthly care fee or other periodic rate, the continuing care contract shall provide statements concerning all of the following:

(A) That the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) Whether payment will be made in advance or after services have been provided.

(D) Whether any adjustment in the monthly care fees is to be made by the provider for the support, maintenance, board, or lodging, which is supplied to a resident who requires medical attention when he or she is absent from the continuing care retirement community.

(E) If any credit or allowance is to be given to a resident who is absent from the continuing care retirement community or from meals, and if such credit is to be permitted at the discretion or by special permission of the provider.

(22) All continuing care contracts shall specify one of the following basic methods for calculating changes in monthly care fees:

(A) For prepaid continuing care contracts, which include monthly care fees, one of the following methods:

(i) Fees shall not be subject to change during the lifetime of the agreement.



(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.

(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.

(B) For monthly fee continuing care contracts, except prepaid contracts, changes in monthly fees shall be based on projected costs, prior year per capita costs, and economic indicators.

(23) The continuing care contract shall provide for notification of the resident at least 30 days in advance of any change in the scope or price of any component of care or other services.

(24) The continuing care contract shall include a provision indicating whether the resident's rights under the continuing care contract include any proprietary interests in the assets of the provider or in the continuing care retirement community, or both.

(25) If there is a loan on the property, the continuing care contract shall advise residents that rights they may have to enforce continuing care contracts are subordinate to the rights of the lender. For equity projects, the continuing care contract shall specify the type and extent of the equity interest and whether any entity holds a superior security interest.

(26) Notice that the living units are part of a continuing care retirement community that is licensed as a residential care facility for the elderly and, as such, any duly authorized agent of the department may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the entire premises at any time, without advance notice.

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signature of the transferor, that provides as follows: "You, the transferor, may cancel the transaction without cause at any time within 90 days from



the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

(28) Notice that during the cancellation period, the continuing care contract may be canceled by the provider without cause.

(29) The terms and conditions under which the continuing care contract may be terminated after the cancellation period by either party, including any health or financial conditions.

(30) A statement that involuntary termination of the continuing care contract by the provider after the cancellation period shall be only for good and sufficient cause.

(A) Any continuing care contract containing a clause that provides for a resident to be evicted, or provides for a continuing care contract to be canceled for “just cause,” “good cause,” or other similar provision, shall also include a provision that none of the following activities by the resident, or on behalf of the resident, constitutes “just cause,” “good cause,” or otherwise activates the eviction or cancellation provision:

(i) Filing or lodging a formal complaint with the department or other appropriate authority.

(ii) Participation in an organization or affiliation of residents, or other similar lawful activity.

(B) No provider shall discriminate or retaliate in any manner against any resident of a continuing care retirement community for contacting the department, or any other state, county, or city agency, or any elected or appointed government official to file a complaint or for any other reason, or for participation in a residents’ coalition.

(C) Nothing in this provision shall diminish the provider’s ability to terminate the continuing care contract for good and sufficient cause.

(31) A statement that at least 90 days’ written notice is required for an involuntary termination of the continuing care contract.

(32) A statement concerning the length of notice that is required by a resident for the voluntary termination of

the continuing care contract after the cancellation period.

(33) The policy for refunding any portion of the entrance fee, in the event of cancellation, termination, or death.

(34) The following notice at the bottom of the signatory page:

“NOTICE”

(date)

This is a continuing care contract as defined by Section 1771(j) or 1771(w) of Chapter 10 of Division 2 of the California Health and Safety Code. This contract form has been approved by the State Department of Social Services as required by Section 1787(b) of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has complied with specific requirements of the statutes. Approval by the department is neither a guaranty of performance nor an endorsement of contract provisions. Prospective transferors and residents are encouraged to carefully consider the benefits and risks of this contract before signing. You should seek financial and legal advice as needed.

(b) A life care contract shall also include all of the following:

(1) Provision to provide all levels of care, including acute care and physicians and surgeons' services to a resident.

(2) Provision to provide this care for the duration of the resident's life except for termination of the life care contract by the provider during the cancellation period or after the cancellation period for good cause.

(3) Provision to provide a comprehensive continuum of care, including skilled nursing, under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.



(4) Provision that no change will be made in the monthly care fees based on the resident's level of care or service.

(5) Provision to subsidize residents who become financially unable to pay their monthly care fees provided that the resident's financial need did not arise from the action to divest themselves of their assets.

(c) The continuing care contract may include, but is not limited to, and need not include, any of the following items:

(1) Provision for a resident who becomes financially unable to pay for his or her monthly care fees at some future date to be subsidized. If provision for subsidizing a resident is included, the following provisions may be included:

(A) A stipulation that the resident shall apply for any public assistance or other aid for which eligible and that the provider may apply on behalf of the resident.

(B) A stipulation that the provider shall be the final and conclusive determining body of any adjustments to be made or any action to be taken regarding any charitable consideration to be extended to any of its residents.

(C) Provision for the payment or entitlement of actual costs of care from any property acquired by the resident subsequent to the adjustment, as provided in subparagraph (B), or from any property not disclosed by the resident at any time.

(D) Provision that the provider may pay the monthly premium of the resident's health insurance coverage under medicare to ensure that such payments will be made.

(E) Provision that the provider may receive an assignment from the resident of the right to apply for and to receive such benefits, for and on behalf of the resident.

(F) Provision that the provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is available from any governmental agency.



(2) Provisions which limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In such cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the continuing care contract or in the medical report, which may be attached to and made a part of the continuing care contract.

(3) Legal remedies which may be applied in case any material misrepresentation or omission pertaining to assets or health has been made by the resident.

(4) A clause which restricts transfer or assignments of the resident's rights and privileges under a continuing care contract because of the personal nature of the continuing care contract.

(5) A clause for the protection of the provider in instances where it may wish to waive any of the terms or provisions of the continuing care contract in specific instances where the resident has breached the continuing care contract without relinquishment of its right to insist upon compliance by the resident with all of the other terms or provisions.

(6) Provision for the reimbursement of any loss or damage beyond normal wear and tear suffered by the provider as the result of carelessness or negligence on the part of the resident.

(7) Provision that the resident agrees to observe off-limit areas of the continuing care retirement community as designated by the provider for safety reasons. However, the provider shall not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect.

(8) Provision for the subrogation to the provider of the resident's rights in the case of injury to a resident caused by the acts or omissions of a third party, or for the assignment of the resident's recovery or benefits in this case to the provider to the extent of the value of the goods and services furnished by the provider to or on behalf of the resident.



(9) Provision for a lien on any judgment, settlement, or recovery for any additional expense incurred by the provider in caring for the resident as a result of injury.

(10) Provision that requires the cooperation of the resident in assisting in the diligent prosecution of any claim or action against any third party.

(11) Provision for the appointment of a conservator or guardian by a court of competent jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Provision that, in the event a provider whose property is tax exempt is required to pay property taxes, or in-lieu taxes, the additional costs will be charged to the resident on a pro rata basis.

(13) Other provisions approved by the department.

(d) (1) A copy of the resident's bill of rights as described in Section 1771.5 shall be attached to every continuing care contract.

(2) A copy of the current audited financial statement of the provider shall be attached to every continuing care contract. For a provider whose current audited financial statement does not accurately reflect the financial ability of the provider to fulfill the continuing care contract promises, this requirement shall include supplemental statements or attachments that disclose all of the following:

(A) That the reserve requirement has not yet been determined or met, and that entrance fees will not be held in escrow.

(B) That the ability to provide the services promised in the continuing care contract will depend on successful compliance with the approved financial plan.

(C) The approved financial plan for meeting the reserve requirements.

(e) A schedule of the average monthly fees for each type of residential living unit charged to residents for each of the five years preceding execution of the continuing care contract shall be attached to every continuing care contract. This schedule shall be updated annually at the end of each fiscal year. If the continuing

care retirement community has not been in existence for five years, the information shall be provided for each of the years the continuing care retirement community has been in existence.

(f) If any continuing care contract provides for a health insurance policy for the benefit of the resident, a binder under Sections 382 and 382.5 of the Insurance Code shall be attached to the continuing care contract.

(g) A completed form in duplicate, captioned “Notice of Cancellation” shall be attached to every continuing care contract. Such notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

“NOTICE OF CANCELLATION”

(date)

(Enter date of transaction)

You may cancel this transaction, without any penalty within 90 calendar days from the above date.

If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider, and any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated for a reasonable processing fee to cover costs and the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.

If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when received.

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain



liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____
(Name of provider)

at _____
(Address of provider's place of business)

not later than midnight of _____ (date).

I hereby cancel this
transaction

(Transferor's signature)



Approved _____, 1999

Governor

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